

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-6080

ALLAN A. PETERSON,

Plaintiff - Appellant,

v.

BRIAN PRICE; MICHELLE SPEARS; DOMINIC GUTIERREZ; SUSAN
MCCLINTOCK; MAVIS HOLYFIELD,

Defendants - Appellees.

Appeal from the United States District Court for the Northern
District of West Virginia, at Wheeling. Frederick P. Stamp, Jr.,
Senior District Judge. (5:06-cv-00106-FPS-JSK)

Submitted: March 27, 2008

Decided: April 4, 2008

Before TRAXLER and DUNCAN, Circuit Judges, and HAMILTON, Senior
Circuit Judge.

Remanded by unpublished per curiam opinion.

Allan A. Peterson, Appellant Pro Se. Betsy S. Jividen, Assistant
United States Attorney, Wheeling, West Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Allan A. Peterson seeks to appeal the district court's order adopting the magistrate judge's report and recommendation and dismissing his complaint under Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971). The notice of appeal was received in this court shortly after expiration of the sixty-day appeal period. Fed. R. App. P. 4(a)(1)(B). Because Peterson is incarcerated, the notice is considered filed as of the date it was properly delivered to prison officials for mailing to the court. Fed. R. App. P. 4(c)(1); Houston v. Lack, 487 U.S. 266 (1988). The record does not reveal when Peterson gave the notice of appeal to prison officials for mailing. Accordingly, we remand the case for the limited purpose of allowing the district court to obtain this information from the parties and to determine whether the filing was timely under Fed. R. App. P. 4(c)(1) and Houston v. Lack, 487 U.S. 266 (1988). The record, as supplemented, will then be returned to this court for further consideration.

REMANDED